

SEPTEMBER 18, 2008 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, September 18, 2008, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Al Higginbotham and Commissioners Brian Blair, Rose Ferlita (arrived at 9:03 a.m.), Ken Hagan, Jim Norman, and Mark Sharpe.

The following member was absent: Commissioner Kevin White (schedule conflict).

Chairman Higginbotham called the meeting to order at 9:03 a.m. Commissioner Blair led in the pledge of allegiance to the flag and gave the invocation.

#### CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, stated there were no changes to the agenda. **Commissioner Sharpe moved approval, seconded by Commissioner Blair.** Chairman Higginbotham stated citizens who were unable to stay for the noise rule public hearing could speak during general public comments. **The motion carried six to zero.** (Commissioner White was absent.)

#### PUBLIC COMMENT

Mr. Christopher Clifton, 8009 Capwood Avenue, addressed concerns related to the Ford Amphitheatre (Amphitheatre); discussed spending \$9,000 for new windows, capability of noise control, results from the EPC workshop, decibel standards, and community dissatisfaction; and asked the EPC to think of the people before voting on the issue.

#### CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report from the Chairman, David Jellerson - Mr. Jellerson reported the CEAC heard presentations by EPC staff on the changes to Chapter 1-10, noise rule, at the September 8, 2008, meeting. The review included background details on the science of noise measurement presented by Dr. John MacDonald, University of Central Florida. After review and discussion, CEAC unanimously recommended the EPC Board adopt the noise rule changes recommended by EPC staff. Presentations from applicants for the pollution recovery fund (PRF) grants were heard; there were 17 applications totaling approximately \$1 million and funds available for grant awards totaled just over \$600,000; final review and debate of the applications would occur at the October 2008 meeting; and the goal was to present recommendations to EPC next month. Mr. Jellerson announced Ms. Annie Sutton, CEAC member, had passed away and commented on her dedication to the protection of environmental resources for the County.

#### CONSENT AGENDA

A. Approval of minutes: July 17, 2008.

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- B. Monthly activity reports.
- C. PRF report.
- D. Gardinier Settlement Trust Fund report.
- E. Legal case summary: August and September 2008.
- F. Fourth quarterly hybrid update report.
- G. Customer service survey report.
- H. Request for authority to take appropriate legal action against Adam Chowdhury.
- I. Approve second amended interlocal agreement with Hillsborough County.

Chairman Higginbotham called for a motion to approve the Consent Agenda. **Commissioner Sharpe so moved, seconded by Commissioner Norman, and carried six to zero.** (Commissioner White was absent.)

SPECIAL PRESENTATIONS

Tampa Bay Estuary Program (TBEP) Report - Ms. Holly Greening, director, TBEP highlighted the history of the TBEP; commented on implementation of the management plan, partners, and local funding commitments being a direct match of Environmental Protection Agency (EPA) funds; discussed population-based funding, local funding commitment stability, results from local counties/cities and citizens activities, and County and EPC projects established; and noted \$127,000 was awarded in the County in the last three years from the TBEP license plate. The County and EPC received more than \$3.6 million in return from the \$84,000 per year investment in the TBEP. She discussed the Tampa Bay Nitrogen Management Consortium and recommendations endorsed by the policy board from the April through June 2008 workshops, which could reduce nitrogen loads to the Bay, and was seeking approval from the Department of Environmental Protection (DEP) and EPA to apply the recommendations as regulatory requirements; reported the next steps were to draft a regional fertilizer ordinance model for policy board consideration by November 2008 to include point-of-sale restrictions, technical background, and cost benefits and contact DEP and EPA regarding possible credit for adoption of the ordinances; and thanked EPC for continued support.

Commissioner Blair commended Ms. Greening. Ms. Greening acknowledged the partnership with the County and EPC as major contributors to improving the Bay and commented on the 6,000-acre increase in sea grass and water clarity/quality improvement.

National Pollution Prevention Week Proclamation - Mr. Gerardo Javier, EPC staff, reported staff focused on energy conservation by promoting the use of energy efficient lighting fixtures, pollution prevention displays were set up in the County Center lobby and Roger P. Stewart Center, and staff would be at

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the Wal-Mart Stores Incorporated located on Causeway Boulevard to accept conventional light bulb fixtures from the public in exchange for efficient compact fluorescent lighting fixtures. Commissioner Blair presented the proclamation proclaiming the week of September 14-20, 2008, as Hillsborough County Pollution Prevention Week to Messrs. Ernest Mayes, Solid Waste Management Department; Randy Klindworth, Facilities Management Division, Real Estate Department; Thomas Hernandez, Tampa Electric Company (TECO); and Ms. Kelley Boatwright, EPC staff.

Mr. Hernandez discussed the \$1.2 billion capital investment and emission reductions, acknowledged the partnership, and offered appreciative comments. Commissioner Sharpe made laudatory comments regarding the efforts of Mr. Hernandez. Mr. Klindworth was appreciative and recognized the teamwork with EPC and other departments. Mr. Mayes was proud to be associated with pollution cleanup and taking on the responsibilities of handling hazardous waste collection. Commissioner Ferlita commended TECO and departments involved with the partnership.

PUBLIC HEARING

Consider Amendments to Chapter 1-10, Noise Rule - Chairman Higginbotham called for a motion to open the public hearing. **Commissioner Ferlita so moved, seconded by Commissioner Blair, and carried six to zero.** (Commissioner White was absent.) EPC General Counsel Richard Tschantz said the public hearing had been properly published in *The Tampa Tribune* and reported changes to the rule, as provided in background material. In answer to Chairman Higginbotham, Attorney Tschantz noted CEAC did not vote on the definition change of decibel in Chapter 1-10.01(2)(d).

Mr. Jerry Campbell, Director, EPC Air Management Division, commented on the history of Chapter 1-10, amendments, provisions, and objectives; stated input was solicited from citizens, affected parties, acoustic professionals, and CEAC; and introduced Dr. MacDonald, who was hired by the EPC as an outside expert because of the extensive changes needed.

Dr. MacDonald defined terms involved in the noise ordinance and characteristics, which were magnitude, frequency, and duration; detailed the two components to the existing and proposed noise rule; and distinguished differences between A-weighted decibel levels and octave band limits. Based on the terms mentioned, Dr. MacDonald opined the noise rule required change due to community annoyance and environmental noise and commented on frequency and literation components, momentary instantaneous sounds, and the current rule needing Lmax levels high enough so outdoor events were not flagged as violations and to provide guidance to the EPC. He utilized a thermometer graph to display noise levels of common sounds that could be violations under the current rule, stated extensive literature confirmed the use of Leq was the preferred method for community noise annoyance, touched on the database

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established, and summarized recommended changes, as provided in background material.

Ms. Kay Strother, EPC staff, highlighted revisions and exemptions to the rule, as provided in background material. Responding to Commissioner Norman, Ms. Strother clarified event exemptions. Mr. Campbell summarized the numerical sound level limits for residential receiving land use category, as provided in background material; acknowledged public comments during workshops; stated reasonable protection from annoyance for the public and responding to every complaint would not change; and requested EPC Board consideration to ask Dr. MacDonald to compare the proposed octave bands to other communities across the country.

The following people addressed noise issues relating to the Amphitheatre: Mr. Edward Schroering Jr., 806 Pyramid Drive, who commented on concert annoyance, loud noise from automobiles, and how many cities mentioned had amphitheatres within city limits and asked the EPC Board to vote no on the proposal, and Ms. Robin Gordon, 806 Pyramid Drive, who mentioned the irony of proclaiming National Pollution Prevention Week and requested EPC to consider noise pollution and protect citizens from harmful noise.

Ms. Joanne O'Brien, 6916 Thrasher Drive, said the Amphitheatre was doing a great job, was not affected by the noise anymore, felt the new rule was good, and commended the EPC and Dr. MacDonald for efforts.

Mr. Arnold Stark, 6305 Eureka Springs Road, commented on the EPC being responsive to the needs and desires of the community affected by the noise rule decision, the desire for more stringent revisions, commercial and industrial categories being held to the same levels as residential, excessive noise, and hearing obscenities shouted. Mr. Joe Gross, city of Temple Terrace (Temple Terrace), Code Enforcement Department, expressed appreciation for the opportunity to be heard and touched on noise issues related to Temple Terrace, ensuring the change in metrics would not dilute standards and protections, and EPC kept tranquility of constituents foremost in their minds during deliberations. Responding to Commissioner Ferlita, Mr. Gross said he was delegated to speak for the Temple Terrace Code Enforcement Department.

Mr. David Penoyer, 11006 Saginaw Drive, supported updating changes to the rule, acknowledged difficulty of regulating instantaneous readings of noise, discussed issues with the ten-minute averaging criteria and low-frequency bands, and asked the EPC Board to reject the rule for those reasons.

Commissioner Sharpe referenced complaints and not being able to significantly address sound issues for citizens in proximity to the Amphitheatre. Dr. Garrity advised of reductions in complaints as a result of the noise wall and sound requirements currently established, addressed the sound issue increasing during the summer for certain concerts, and stated Live Nation took responsibility for a warning letter issued. Mr. Javier reported complaint

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averages had dropped two-thirds for the last three years since implementing interim measures and the noise wall.

Opining the proposed rules, with the exception of the lower decibel, were being reduced and could be enforced, and after discussing coexistence and tranquility continuing with the Amphitheatre and sound diminishment, **Commissioner Sharpe moved to approve the changes. Commissioner Ferlita seconded the motion**, was pleased to hear the history related to complaint reductions, and perceived enforceability was important. In answer to Commissioner Ferlita, Attorney Tschantz verified the noise ordinance had not had major revisions since the mid-1970s and the changes would allow enforceability. Commissioner Ferlita discussed EPC responsibility, balancing tranquility, stronger partnerships, fairness for both sides, needing a duration component, and the noise rule not being just for the Amphitheatre.

Commissioner Norman recalled expressing concerns at meetings prior to the existence of the Amphitheatre and the Board of County Commissioners (BOCC) had voted to not meddle in businesses on the Florida State Fair Authority property, agreed the changes were the best for the ordinance and enforceability, and supported the recommendation. **The motion carried six to zero.** (Commissioner White was absent.)

EXECUTIVE DIRECTOR

Responding to Commissioner Blair, Attorney Tschantz noted a vote was required to discuss the item, which tied into the Executive Director item. **Commissioner Ferlita moved to have Commissioner Blair add the item on the agenda, seconded by Commissioner Sharpe, and carried six to zero.** (Commissioner White was absent.)

Dr. Garrity expressed laudatory comments regarding Ms. Sutton's service on the CEAC and stated the family would attend the BOCC Awards meeting on October 22, 2008, to receive a plaque in honor of her services. Dr. Garrity acknowledged the accomplishments of Mr. Tom Koulianos, Director, EPC Finance and Administration, who was retiring, and invited EPC Board members to EPC to celebrate his career on October 29, 2008.

After expressing laudatory comments regarding Mr. Koulianos, **Commissioner Blair moved that EPC start the Tom Koulianos Citizens Conservation Efficiency Award and allow staff to breakout the criteria and bring that back to the EPC, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioner Ferlita was out of the room; Commissioner White was absent.) Chairman Higginbotham offered laudatory comments and congratulated Mr. Koulianos for the award. Mr. Koulianos expressed gratitude in working with EPC and Dr. Garrity, was appreciative of the kind words, and recognized staff.

Dr. Garrity said Ms. Joan Ohman would replace Mr. Koulianos and advised of previous experiences, presented a sample of the informational card to explain

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recent changes in the wetlands program as part of customer service efforts, and thanked the Wetlands Management Division staff.

Attorney Tschantz recognized an intern from Stetson University Incorporated.

ENVIRONMENTAL RESOURCES MANAGEMENT DIVISION

Report on Cockroach Bay Marine Sanctuary Citizen Proposal - Mr. Tom Ash, EPC staff, recalled citizen recommendations from the July 2008 EPC meeting related to a sanctuary for the Cockroach Bay aquatic preserve; provided a brief history of the area; commented on differences between an aquatic preserve and a sanctuary, intent for designations, sustainability of public use, and the land being unique; detailed the proposal; discussed the need for a sea grass management plan, multiagency jurisdiction, historical significance of the special designation, increasing law enforcement, and recreational interests being revisited; and stated the ecosystem of the Cockroach Bay aquatic preserve was not currently being managed as a whole. Dr. Randy Runnels, aquatic preserves manager, DEP, noted managing four aquatic preserves in three counties; explained the distinction of Cockroach Bay aquatic preserve; discussed island purchases, buffers, statewide reorganizations, and ecosystems; echoed comments regarding Cockroach Bay Aquatic Preserve Management Advisory Team (CAPMAT); and encouraged the EPC to revitalize CAPMAT.

Chairman Higginbotham was familiar with CAPMAT, suggested going back to members that had participated, touched on personal use of Cockroach Bay and putting the public at peace that the EPC was not voting to restrict use or restrict the public from a program involving sea grass beds, was anxiously awaiting the reports, and thanked Mr. Ash for the update.

Commissioner Blair thanked the Tampa Port Authority and EPC staff for mitigating land at the port by donating \$1 million to the restoration of the Cockroach Bay area and the commitment of \$100,000 to Hillsborough County.

FINANCE AND ADMINISTRATION DIVISION

Executive Director's Evaluation Results - Mr. Koulianos had averaged the scores of the evaluations received; stated the EPC budget did not include a salary increase for senior management, which included Dr. Garrity and saved an EPC position; and asked the EPC Board to accept the evaluation as presented.

Commissioner Ferlita was glad to accept the evaluation as presented, opined measures self-imposed by Dr. Garrity had set a bar in terms of doing more than what was expected, and appreciated his service. Commissioner Sharpe echoed laudatory comments.

Commissioner Norman believed there were outstanding Internal Performance Auditor issues to be resolved related to target dates, wetlands accountability, internal reviews/reports, quality control, citizen comments, and the Planning Commission. Commissioner Sharpe agreed and discussed being

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more proactive on the issue involving mulch and debris, challenges dealing with State agencies/jurisdiction, and potential environmental hazards.

Dr. Garrity thanked the EPC Board for their support and responded to issues raised from Commissioners Norman and Sharpe. Responding to Commissioner Blair, Dr. Garrity provided an update related to the Hobbs Road mulch-site project and addressed Mothers Organics Incorporated not having their permit unduly withheld. Mr. Andy Schipfer, Acting Director, EPC Waste Management Division, commented on letters and accusations, competing parties, money involved, complaints about the Solid Waste Management Department, compliance, warning notices, consent timelines, reductions in mulch on the Hobbs Road site, probability of a lawsuit, exemptions, Mothers Organics Incorporated refusal to obtain permits, and cease of operations and compliance efforts at the Hobbs Road site. Discussion included violations, other viewpoints, over-regulating, complaints, and standard operating procedures.

After asking Mr. Roy Davis for comments, **Commissioner Blair moved to open for public comment, seconded by Commissioner Hagan, and carried five to one; Commissioner Ferlita voted no.** (Commissioner White was absent.) Responding to Commissioner Ferlita, Chairman Higginbotham clarified anyone remaining in the audience was invited for public comment.

Mr. Roy Davis, 3224 McIntosh Road, offered to answer questions, referenced a report on agricultural use of materials and benefits to the public, stated nurseries were doing the same thing as discussed without violations, and opined the newly proposed EPC consent order was punitive and criminalized the situation and the EPC would end up in court if they continued that process.

Discussion ensued regarding the briefing received from EPC staff, financial impact on the request, compliance with the University of Florida Institute of Food and Agricultural Science farm plan, County costs, and stipulated penalties. Commissioner Ferlita recommended a public meeting. Discussion resumed related to the 10-foot allowance, solid waste classification, letter received, mulch being used for fertilization, the 5-foot reduction requested, potential for contaminants, shredded yard trash from the County not being considered hazardous, and the 5-foot exemption already approved.

Mr. Schipfer discussed the site, observation of inspections related to contaminants, the site's dramatic change since 2006, and lack of problems with a 2-foot requirement until the Hobbs Road site. In answer to Commissioner Sharpe, Mr. Schipfer verified the owner was cooperative and had completed substantial work to comply and touched on solid waste issues, formal discussions getting the EPC involved with recycling credits, and the EPC not dealing with contracts. Commissioner Blair was not convinced EPC staff was getting to the bottom of the issues.

Mr. Koulianos advised a motion was needed for the Executive Director's evaluation. **Commissioner Ferlita moved approval, seconded by Commissioner**

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**Sharpe, and carried five to zero.** (Commissioner Blair was out of the room; Commissioner White was absent.)

There being no further business, the meeting was adjourned at 11:23 a.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:  
PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

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